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8 JOSE HERRERA-RAMOS,  
9 Plaintiff,  
10 v.  
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12 JOHN THICH, et al.,  
13 Defendants.  
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18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

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21 Case No. 25-cv-01366 BLF (PR)

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23 **AMENDED ORDER OF PARTIAL  
DISMISSAL AND OF SERVICE;  
DIRECTING DEFENDANTS TO  
FILE DISPOSITIVE MOTION OR  
NOTICE REGARDING SUCH  
MOTION; INSTRUCTIONS TO  
CLERK**

24  
25 (Docket No. 11)

26  
27 Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42  
28 U.S.C. § 1983 against correctional staff and the warden at Salinas Valley State Prison  
("SVSP"), where he was previously confined. Dkt. No. 1 at 9. On July 15, 2025, the  
Court screened the complaint and dismissed it with leave to amend deficient claims. Dkt.  
No. 10. Plaintiff was advised that failure to file an amended complaint would result in the  
dismissal of the deficient claims and the matter would proceed on the cognizable claims.  
*Id.* at 7.

29 Plaintiff has filed a response, stating his desire to proceed with the cognizable  
30 claims and for the deficient claims to be dismissed without prejudice. Dkt. No. 11.  
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## DISCUSSION

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### A. Standard of Review

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A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See 28 U.S.C. § 1915A(a)*. In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id. § 1915A(b)(1),(2)*. Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

### B. Plaintiff’s Claims

In the screening order, the Court found the following cognizable claims:

#### 1. Claim One: First Amendment and Eighth Amendment Violations (rights to be free of retaliation and use of unnecessary force)

Plaintiff claims that on or about December 16, 2022, upon his arrival at SVSP-Facility “B,” Defendant Lt. Erik Beam approached him and told him that “what happen to [him] at California City Facility was nothing compare[d] to what him and Defendant Thich... could have happen to [him], if [he] didn’t work for them.” Dkt. No. 1 ¶ 10. Plaintiff states that while at California City Correctional Facility, he was jumped and assaulted 10-25 times between November 2021 and March 2022, for “refusing to bring drugs at visit.” *Id.* ¶ 11. Then on December 27, 2022, Defendants Y. De Leon and Euskeda pulled Plaintiff from his cell and escorted him to Building 1 rotunda, where Defendant Erik Beam, John Thich, and Paul Estrada were waiting. *Id.* ¶ 12. Then Defendant Estrada punched Plaintiff in the stomach, Defendant Beam body slammed him to the floor, and Defendant Thich stepped on his head “with severe extreme strength.” *Id.* Then Defendant Beam started kicking Plaintiff in the stomach, chest, and

1 his genital area. *Id.* Defendants Estrada and De Leon used their feet to  
2 “step on Plaintiff lifting his head.” *Id.* ¶ 13. Defendant Beam squatted  
3 down and whispered to Plaintiff, “I’m hearing you[’re] not playing nice  
4 with my inmate crew, who the f\*ck do you think you are to try to get rid of  
5 my informant.” *Id.* Defendant Beam punched Plaintiff in the face,  
6 breaking his nose. *Id.* Defendant Thich told Plaintiff, “This was just a  
7 friendly warning bitch – know your place.” *Id.*

8 Plaintiff was thrown back into his cell with no medical attention and  
9 not let out of his cell for 6 days, denying him 18 consecutive meals. *Id.* ¶  
10 14. He had a cut in his head, broken nose, bruised ribs and stomach, black  
11 eye, and cuts; he was in severe pain for over a month. *Id.* ¶ 15.

12 Plaintiff states that when he and his girlfriend attempted to report the  
13 incident, Defendants Beam and Thich harassed and threatened them. *Id.* ¶  
14 16. Plaintiff claims Defendants also allowed 3 inmates to beat him. *Id.* ¶  
15 17. Plaintiff claims that he feared to use or attempt to use the grievance  
16 process or to make a verbal complaint. *Id.* ¶ 18.

17 These allegations are sufficient to state a claim for excessive force  
18 against Defendants Estrada, Beam, Thich, and De Leon, on December 27,  
19 2022. *See Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

20 The allegations are also sufficient to state a retaliation claim.  
21 “Within the prison context, a viable claim of First Amendment retaliation  
22 entails five basic elements: (1) An assertion that a state actor took some  
23 adverse action against an inmate (2) because of (3) that prisoner’s protected  
24 conduct, and that such action (4) chilled the inmate’s exercise of his First  
25 Amendment rights, and (5) the action did not reasonably advance a  
26 legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68  
27 (9th Cir. 2005) (footnote omitted). Plaintiff alleges that Defendants Beam  
and Thich harassed and threatened him when he attempted to report the  
excessive force incident which then chilled the exercise of his First  
Amendment right, and such conduct by Defendants clearly did not  
reasonably advance a legitimate correctional goal.

28 [¶]...[¶]

29 **3. Claim Three: Fourteenth Amendment and Eighth Amendment**  
30 **Violations (retaliation and use of unnecessary force)**

31 Plaintiff claims that in June 2024, Defendants allowed inmates to “jump”  
32 him in the concrete yard B-1, “according to Thich and De La Torre, to remind

1 Plaintiff who run the yard.” Dkt. No. 1 ¶ 24. Plaintiff told Defendant Galdillo that  
2 he feared for his safety and submitted a grievance as an emergency to the appeals  
3 office; it was never processed or returned. *Id.* ¶ 25.

4 Liberally construed, Plaintiff states a failure to protect claim against  
5 Defendants Thich and De La Torre based on the attack by inmates in June  
6 2024. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994).

7 [¶]...[¶]  
8

9 **4. Claim Four: First Amendment and Eighth Amendment**  
10 **violations (retaliation, cruel and unusual punishment, use of**  
11 **unnecessary force)**

12 In support of this claim, Plaintiff alleges that he continued to fear for  
13 his life as he was aware that 3 inmates who had been experiencing the same  
14 things had been killed in Facility B in the last 5 months. Dkt. No. 1 ¶ 26.  
15 In September 2024, his girlfriend contacted Internal Affairs and reported  
16 the ongoing threats, beatings, and intimidation which were aimed at  
17 pressuring Plaintiff’s girlfriend to agree to bring drugs “via visiting,” which  
18 they refused to do. *Id.* At the end of the month, Plaintiff again reported the  
19 ongoing issues to the warden’s office, appeals coordinator, and ISU Sgt.  
20 Gonzalez. *Id.* ¶ 27.

21 On August 25, 2024, after Defendants Thich and other defendants  
22 learned that Plaintiff’s claims were being investigated, Defendant Thich  
23 and Zaun falsified a “1030,” claiming to have received confidential  
24 information that Plaintiff was responsible for attempting to introduce a  
25 controlled substance into the Institution. *Id.* ¶ 28.

26 The 1030 also stated that due to the situation, Plaintiff’s safety would be in  
27 jeopardy if he stayed at SVSP. *Id.*

28 Plaintiff was being housed in ad-seg, but was escorted by John Does  
1-3, Defendants Thich, [Euskeda], and Zaun. *Id.* ¶ 29. Plaintiff was  
reminded “that it was easier for him to be found commit suicide if he open  
his mouth.” *Id.* Plaintiff was punched hard and knocked out by an  
unidentified assailant. *Id.* Defendants Thich and Zaun kicked him into  
unconsciousness. *Id.* Plaintiff reported this incident to Sgt. Gonzalez who  
merely laughed. *Id.* ¶ 30. However, another sergeant had Plaintiff  
transferred to Soledad pending transfer to RJD for his safety. *Id.*

29 The allegations are sufficient to state another excessive force claim  
30 against Defendants Thich and Zaun.

1 Dkt. No. 10 at 2-3, 4-6. In accordance with Plaintiff's notice, all other claims shall be  
2 dismissed without prejudice from the complaint. Dkt. No. 11.

3

## 4 CONCLUSION

5 For the foregoing reasons, the Court orders as follows:

6 1. This matter is proceeding on the following cognizable claims: (1) excessive  
7 force claim against Defendants Estrada, Beam, Thich, and De Leon for the December 27,  
8 2022 incident; (2) retaliation claim against Defendants Beam and Thich; (3) excessive  
9 force claim against Defendants Estrada, Aldama, and Thich for the April 2024 incident; (4)  
10 failure to protect claim against Defendants Thich and De La Torre for the inmate attack in  
11 June 2024; and (5) excessive force claim against Defendants Thich and Zaun following the  
12 false 1030 in August 2024.

13 All other claims are DISMISSED without prejudice. The Clerk shall terminate all  
14 other defendants from this action as there remain no claims against them.

15 2. The following SVSP Defendants shall be served at the CDCR:

16 a. **Correctional Officer Paul Estrada**  
17 b. **Captain Erik Beam**  
18 c. **Correctional Lieutenant John Thich**  
19 d. **Correctional Officer Y. De Leon**  
20 e. **Correctional Officer Aldama (B-Yard Officer)**  
21 f. **Correctional Officer De La Torre (Building 1 and 5 Officer)**  
22 g. **Correctional Sergeant D. Zaun**

23 3. Service on the listed defendant(s) shall proceed under the California  
24 Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights  
25 cases from prisoners in CDCR custody. In accordance with the program, the clerk is  
26 directed to serve on CDCR via email the following documents: the operative complaint  
27 and any attachments thereto, Dkt. No. 1, the Court's initial screening order, Dkt. No. 11,

1 this order of service, and a CDCR Report of E-Service Waiver form. The clerk also shall  
2 serve a copy of this order on the plaintiff.

3 4. No later than 40 days after service of this order via email on CDCR, CDCR  
4 shall provide the court a completed CDCR Report of E-Service Waiver advising the court  
5 which defendant(s) listed in this order will be waiving service of process without the need  
6 for service by the United States Marshal Service (USMS) and which defendant(s) decline  
7 to waive service or could not be reached. CDCR also shall provide a copy of the CDCR  
8 Report of E-Service Waiver to the California Attorney General's Office which, within 21  
9 days, shall file with the court a waiver of service of process for the defendant(s) who are  
10 waiving service.

11 5. Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall  
12 prepare for each defendant who has not waived service according to the CDCR Report of  
13 E-Service Waiver a USM-205 Form. The clerk shall provide to the USMS the completed  
14 USM-205 forms and copies of this order, the summons and the operative complaint for  
15 service upon each defendant who has not waived service. The clerk also shall provide to  
16 the USMS a copy of the CDCR Report of E-Service Waiver.

17 6. No later than **ninety-one (91) days** from the date this order is filed,  
18 Defendants shall file a motion for summary judgment or other dispositive motion with  
19 respect to the claims in the complaint found to be cognizable above.

20 a. Any motion for summary judgment shall be supported by adequate  
21 factual documentation and shall conform in all respects to Rule 56 of the Federal  
22 Rules of Civil Procedure. Defendants are advised that summary judgment cannot  
23 be granted, nor qualified immunity found, if material facts are in dispute. If any  
24 Defendant is of the opinion that this case cannot be resolved by summary judgment,  
25 he shall so inform the Court prior to the date the summary judgment motion is due.

26 b. **In the event Defendants file a motion for summary judgment, the**  
27 **Ninth Circuit has held that Plaintiff must be concurrently provided the**

1                   **appropriate warnings under *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir.**  
2                   **1998) (en banc). See *Woods v. Carey*, 684 F.3d 934, 940 (9th Cir. 2012).**

3               7. Plaintiff's opposition to the dispositive motion shall be filed with the Court  
4 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'  
5 motion is filed.

6               8. Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil  
7 Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing  
8 summary judgment must come forward with evidence showing triable issues of material  
9 fact on every essential element of his claim). Plaintiff is cautioned that failure to file an  
10 opposition to Defendants' motion for summary judgment may be deemed to be a consent  
11 by Plaintiff to the granting of the motion, and granting of judgment against Plaintiff  
12 without a trial. *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam);  
13 *Brydges v. Lewis*, 18 F.3d 651, 653 (9th Cir. 1994).

14               9. Defendants shall file a reply brief no later than **fourteen (14) days** after  
15 Plaintiff's opposition is filed.

16               10. The motion shall be deemed submitted as of the date the reply brief is due.  
17 No hearing will be held on the motion unless the Court so orders at a later date.

18               11. All communications by the Plaintiff with the Court must be served on  
19 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true  
20 copy of the document to Defendants or Defendants' counsel.

21               12. Discovery may be taken in accordance with the Federal Rules of Civil  
22 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
23 Rule 16-1 is required before the parties may conduct discovery.

24               13. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
25 court informed of any change of address and must comply with the court's orders in a  
26 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
27 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

1       14. Extensions of time must be filed no later than the deadline sought to be  
2 extended and must be accompanied by a showing of good cause.

3       **IT IS SO ORDERED.**

4       **Dated: August 26, 2025**

  
5       BETH LABSON FREEMAN  
6       United States District Judge

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Amended Order of Partial Dism & Service  
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